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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARMANDO JOACHIN,

Plaintiff,

v.

HOMETOWNE EATS, INC., et al.,

Defendant.

Case No. 2:18-cv-00793-GMN-CWH

ORDER

Presently before the court is defendants Hometown Eats, Inc. and Alejandra Meza-Cervantes' Motion to Set Aside Entry of Default (ECF No. 17), filed on August 2, 2018. Plaintiff Armando Joachin filed a response (ECF No. 21) on August 15, 2018. Defendants did not reply.

I. BACKGROUND

The parties are familiar with the facts of this case and the court will not repeat them here except where necessary. Joachin brings this Fair Labor Standards Act ("FLSA") case against Hometown Eats and its owners, Meza-Cervantes and Rex Henriott, for failure to pay overtime and other alleged violations. (Compl. (ECF No. 1).) Joachin moved for a clerk's entry of default against Hometown Eats and Meza-Cervantes and a default was entered against them on June 8, 2018. (Entry of Default (ECF No. 9).) Hometown Eats and Meza-Cervantes now jointly move to set aside the default, arguing Joachin will not be prejudiced by setting aside the default because the case is in its early stages. They further argue they have a meritorious defense and their failure to answer was excusable.

Meza-Cervantes acknowledges she and Hometown Eats were served with the summons and complaint. (Aff. of Meza-Cervantes (ECF No. 17-1) at ¶ 4.) When Meza-Cervantes and Hometown Eats were served, however, co-defendant Henriott was out of town, and Meza-Cervantes states: "I did not read the Summons I was served with and so I was under the impression and believed that all of the Defendants needed to be served before the Complaint was to be answered." (*Id.* at ¶ 7.) As a result, Meza-Cervantes states that she did not consult with an

1 attorney until Henriott returned home approximately one month later. (*Id.* at ¶ 8.) Henriott was
2 served and has appeared in this case. (Ans. (ECF No. 19).)

3 Joachin responds that Hometown Eats and Meza-Cervantes had actual notice of the
4 lawsuit and intentionally failed to answer and that they lack a meritorious defense. Joachin does
5 not respond to Hometown Eats and Meza-Cervantes' argument that he will not be prejudiced by
6 setting aside the default. Joachin states a response on this point is unnecessary because the
7 tripartite test is disjunctive and because defendants engaged in culpable conduct and lack a
8 meritorious defense.

9 **II. DISCUSSION**

10 Rule 55 of the Federal Rules of Civil Procedure provides a mechanism for obtaining a
11 default judgment against a party who has failed to plead or otherwise respond to claims brought
12 against it. Where this failure is "shown by affidavit or otherwise," the clerk must enter that
13 party's default under Fed. R. Civ. Proc. 55(a). "The court may set aside an entry of default for
14 good cause." *Id.* at 55(c). "Good cause" is determined through three factors: (a) whether the
15 defaulting party engaged in culpable conduct that led to the default, (b) whether there is a
16 meritorious defense, and (c) whether reopening the case would cause prejudice to the Plaintiff.
17 *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). This test is disjunctive, and proof of any of
18 these three factors may justify setting aside the default. *See Brandt v. American Bankers*
19 *Insurance Co. of Florida*, 653 F.3d 1108, 1111 (9th Cir. 2011).

20 Overarching these factors is the Ninth Circuit's stated policy favoring adjudication of
21 disputes on their merits, *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986), with doubts
22 resolved in favor of setting aside the default. *Schwab v. Bullock's, Inc.*, 508 F.2d 353, 355 (9th
23 Cir. 1974). It is within the court's discretion whether to set aside a default. *O'Connor v. State of*
24 *Nev.*, 27 F.3d 357, 364 (9th Cir. 1994). The court's discretion is especially broad when it is the
25 clerk's entry of default that is being set aside, rather than a default judgment. *Id.*

26 Turning to the disjunctive *Falk* factors, the court finds Joachin would not be prejudiced by
27 setting aside the default under the circumstances of this case. To determine whether the plaintiff
28 would be prejudiced if the default judgment is set aside, "[t]he standard is whether his ability to

1 pursue his claim will be hindered.” *Falk*, 739 F.2d at 463. Setting aside a default must do more
2 than simply delay resolution of the case to be considered prejudicial to the plaintiff. *TCI*, 244
3 F.3d at 701. Similarly, requiring a plaintiff to adjudicate a claim on the merits does not constitute
4 prejudice. *Id.* Rather, the delay must result in some tangible harm, such as “loss of evidence,
5 increased difficulties of discovery, or greater opportunity for fraud or collusion.” *Id.* (quotation
6 omitted).

7 Hometown Eats and Meza-Cervantes’ motion to set aside the default was promptly filed
8 within two months of the clerk entering default and before Henriott answered or there was any
9 other significant activity in the case. This case remains in its early stages, with nearly three of the
10 six months of discovery remaining. (Scheduling Order (ECF No. 23).) Although the motion to
11 set aside default has been pending, Joachin served written discovery on Hometown Eats and the
12 parties’ attorneys have been corresponding regarding discovery. (Pl.’s Mot. to Compel (ECF
13 Nos. 28, 29).) Given the case’s procedural posture and the fact that discovery appears to be
14 underway, setting aside the default would not hinder Joachin’s ability to pursue his case or result
15 in excessive delay. Joachin does not identify any tangible harm he would suffer if default is set
16 aside. Setting aside the default also favors the Ninth Circuit’s policy favoring adjudication of the
17 case on the merits. The court in its discretion therefore finds that setting aside the default would
18 not result in prejudice to Joachin. Having satisfied at least one of the three factors, the court need
19 not proceed any further to find that the clerk’s entry of default should be set aside.

20 **III. CONCLUSION**

21 IT IS THEREFORE ORDERED that defendants Hometown Eats, Inc. and Alejandra
22 Meza-Cervantes’ Motion to Set Aside Entry of Default (ECF No. 17) is GRANTED, and the
23 clerk’s entry of default (ECF No. 9) is set aside as to them.

24 IT IS FURTHER ORDERED that defendants Hometown Eats, Inc. and Alejandra Meza-
25 Cervantes have 10 days to answer or otherwise respond to the complaint.

26 DATED: January 24, 2019

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28 
C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE